

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MARYLAND

EQUAL EMPLOYMENT :
OPPORTUNITY COMMISSION :
Plaintiff, :
and :
KATHY C. KOCH, :
Plaintiff-Intervenor :
vs. :
LA WEIGHT LOSS, : NO.
Defendant. : WDO-02-CV-648

ORIGINAL

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September 28, 2004

Oral deposition of JOHN
JANTHOR, taken pursuant to notice, was
held at the Offices of Esquire Deposition
Services, 1880 John F. Kennedy Boulevard,
11th Floor, Philadelphia, Pennsylvania
19103, beginning at 10:35 a.m., on the
above date, before Staci Ackerman, a
Professional Shorthand Reporter and
Notary Public in and for the
Commonwealth of Pennsylvania.

ESQUIRE DEPOSITION SERVICES
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1 your payroll folks to input the data
2 using codes.

3 A. The screens that they would
4 have used would be similar to the screens
5 that are in use right here. So, to my
6 knowledge, there wouldn't have been any
7 coding that would have represented
8 anything.

9 Q. Who would the file or
10 database have included in 1997?

11 A. In 1997 it would have
12 included all active and non-active
13 employees.

14 Q. All?

15 A. Yes.

16 Q. How was the information
17 stored once input by the payroll
18 department?

19 A. The information would have
20 been stored on the Zurich PC itself.

21 Q. Were backup copies made?

22 A. I don't have that
23 information.

24 Q. Why don't you have that

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1 information?

2 A. In 1997 there was no
3 disciplines in place, so it wouldn't
4 surprise me if there were no backups made
5 on that system at that time, at all.

6 Q. Does LA Weight Loss still
7 possess the machine and the program used
8 in 1997?

9 A. We still possess a Zurich
10 PC, but it is not the same PC that was in
11 place in 1997.

12 Q. When did LA Weight Loss stop
13 using the machine or when did LA Weight
14 Loss lose possession of the machine that
15 was used in 1997?

16 A. That would have been in
17 1999.

18 Q. How did LA Weight Loss lose
19 possession of it?

20 A. It was replaced. It was
21 upgraded by Zurich with a newer computer.

22 Q. In 1999?

23 A. Yes.

24 Q. What happened to the

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1 computer?

2 A. The previous computer was
3 removed by Zurich.

4 Q. Did LA Weight Loss own that
5 computer?

6 A. To the best of my knowledge,
7 I don't -- I can't answer. I don't know
8 whether that was leased at the time or
9 whether that was purchased. The fact
10 that Zurich removed it would probably
11 tell me that it was owned by Zurich.

12 Q. When LA Weight Loss -- when
13 Zurich Payroll removed the machine that
14 was in use in 1997 in 1999, did LA Weight
15 Loss give any instructions to Zurich
16 Payroll?

17 A. No, they did not.

18 Q. Who was responsible for the
19 custody of the machine and the program
20 and the data within the machine in 1997,
21 which LA Weight Loss person?

22 A. That would have been the
23 payroll department.

24 Q. Is there a person?

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1 A. I believe the payroll
2 supervisor was there at that time. Her
3 name is Christine Moffit.

4 Q. And you stated that you
5 don't know what or do you know what
6 record types or fields were used by the
7 PayChoice program in 1997?

8 A. No, I do not.

9 Q. In 1997, did LA Weight Loss
10 maintain computer history files for
11 persons, job changes, salary changes, et
12 cetera?

13 A. No, they did not.

14 Q. Did anyone provide that
15 service for LA Weight Loss?

16 A. No, they did not.

17 Q. In 1997, were reports
18 generated by LA Weight Loss from the
19 Zurich Payroll system?

20 A. I believe there were.

21 Q. What reports?

22 A. That would have been the
23 EEOC report.

24 Q. When you say EEOC report, do

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1 you mean the EEO-1 report?

2 A. Yes.

3 Q. The information that was
4 contained on the Zurich Payroll system
5 within the machine and in the software
6 was maintained by LA Weight Loss until
7 1999?

8 A. It was operated by LA Weight
9 Loss until 1999.

10 Q. Was that information
11 accessible in 1997?

12 A. Yes, it was.

13 Q. Was it accessible in 1998?

14 A. Yes, it was.

15 Q. Was it accessible in 1999?

16 A. In 1999 the information from
17 '97 and '98 was not accessible.

18 Q. What was the cause of that
19 information not becoming accessible?

20 A. The system was upgraded by
21 Zurich from a DOS based system to a
22 Windows based system, at which time all
23 non-active employees, meaning terminated
24 employees, were purged from the system.

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1 Q. The 1997 Zurich Payroll
2 system operated using DOS?

3 A. Yes, it did.

4 Q. And the system was upgraded
5 to what other program, what other
6 operating system?

7 A. Up to Windows system in
8 1999.

9 Q. Prior to the data in the --
10 the 1997 data housed in the machine
11 becoming inaccessible, what did they
12 contain in 1999?

13 I can rephrase that if you
14 want.

15 A. Please do.

16 Q. You said that in 1999 the
17 Zurich Payroll system contained 1997
18 data?

19 A. In 1999 the '97 data no
20 longer existed in the Zurich system
21 unless they were still an active
22 employee. In other words, all non-active
23 employees from '97 to '99 were purged
24 from the system.

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1 Q. Purged by who?

2 A. By Zurich.

3 Q. So, the only people who
4 would have been reflected in the system
5 after the purge would have been people
6 who -- the only 1997 people would have
7 been persons who remained active?

8 A. That is correct.

9 Q. Did LA Weight Loss give any
10 instructions to Zurich Payroll when
11 Zurich Payroll purged the system?

12 A. No, they did not.

13 Q. Did LA Weight Loss know that
14 Zurich Payroll was going to purge the
15 system?

16 A. No, they did not.

17 Q. Why didn't it know?

18 A. They were -- the system was
19 maintained by Zurich and I think that
20 there was a lot of trust placed in Zurich
21 and Zurich was the owner of this
22 software. They instructed LA Weight Loss
23 that the system required an upgrade.
24 Zurich scheduled the time, came out and

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1 performed the upgrade and informed LA
2 Weight Loss the upgrade was complete. So
3 there were no instructions given by
4 either party as to the contents of the
5 data.

6 Q. Did LA Weight Loss ask
7 Zurich Payroll any questions about the
8 upgrade or the purging of the data?

9 A. No, they did not.

10 Q. Do you know why?

11 A. I believe that there was a
12 great deal of professional trust placed
13 in Zurich, as they were the owners of
14 this software.

15 Q. Did LA Weight Loss in 1999
16 not believe that it had any use for the
17 purged data?

18 MS. KAREN NICK: Objection to
19 form.

20 THE WITNESS: I can't answer
21 that.

22 BY MR. ANDERSON:

23 Q. Did any policies exist in
24 1999 to prevent destruction of data?

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1 A. To my knowledge, no, there
2 was none.

3 Q. When did LA Weight Loss
4 learn that the 1997 data had been purged?

5 A. Not until at some point
6 after the purge when they probably went
7 to confirm some data from prior years.

8 MS. KARETNICK: Mr. Janthor,
9 if you're speculating, I would ask
10 that you not speculate. If you
11 don't know the answer to the
12 question, the answer should be, I
13 don't know.

14 THE WITNESS: Yeah, I really
15 don't know.

16 BY MR. ANDERSON:

17 Q. What policies and procedures
18 after the purge were put in place by LA
19 Weight Loss to learn of purges, be
20 consulted about purges --

21 MS. KARETNICK: Objection.

22 BY MR. ANDERSON:

23 Q. -- and to prevent purges?

24 MS. KARETNICK: Objection to

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1 form.

2 You can answer.

3 THE WITNESS: Up to this
4 point in time?

5 BY MR. ANDERSON:

6 Q. When was the first time that
7 LA Weight Loss put policies in place to
8 prevent purges, be informed of purges, et
9 cetera?

10 A. I can't answer that. I
11 don't have that information.

12 Q. The 1997 data is not
13 accessible currently?

14 A. Correct.

15 Q. Is there anything that would
16 make it accessible?

17 A. Not to my knowledge.

18 Q. Is it in anyone's
19 possession?

20 A. No, it is not.

21 Q. In the first quarter of 1997
22 you said that ADP maintained the payroll
23 system at LA Weight Loss?

24 A. Correct.

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1 Q. Is that data currently
2 accessible?

3 A. No, it is not.

4 Q. When did it become
5 inaccessible?

6 A. I can't answer that.

7 Q. Who made it inaccessible?

8 MS. KARETNICK: Objection to
9 form.

10 THE WITNESS: I would be
11 speculating. I would imagine that
12 ADP removed the system, any active
13 employees were then moved to the
14 Zurich system, would be how it
15 would typically transfer.

16 BY MR. ANDERSON:

17 Q. In 1998, did LA Weight Loss
18 continue to use Zurich Payroll systems as
19 its payroll administrator?

20 A. Yes, they did.

21 Q. Did it use the same machine
22 that it had used in 1997?

23 A. Yes, it did.

24 Q. Using the same PayChoice

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1 software?

2 A. Yes, it did.

3 Q. Did the 1997 data within
4 that machine carry into 1998?

5 A. Yes, it did.

6 Q. So, in 1998 the machine
7 would have housed 1998 data and 1997
8 data?

9 A. Yes, it would have.

10 Q. In 1998, did LA Weight Loss
11 have any history, computerized history
12 files for applicants or employees?

13 A. No, they did not.

14 Q. In 1998, did LA Weight Loss
15 generate any reports using the Zurich
16 Payroll system?

17 A. Only the EEO-1 reports.

18 Q. In 1998, did LA Weight Loss
19 have any machine-readable files that fit
20 within the first three paragraphs of the
21 EEOC's Notice other than the Zurich
22 Payroll system?

23 A. No, they did not.

24 Q. Is the 1998 Zurich Payroll

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1 system data accessible?

2 A. No, it is not.

3 Q. When did it become
4 inaccessible?

5 A. In 1999 when they performed
6 the upgrade.

7 Q. When in 1999 was the upgrade
8 done?

9 A. I don't have that
10 information. I believe it was done in
11 the early 1999, in the first quarter.

12 Q. So, in the first quarter you
13 believe of 1999 the conversion took place
14 in which Zurich Payroll purged non-active
15 employees from the system?

16 A. Correct.

17 Q. And in 1999, first quarter,
18 you believe Zurich Payroll systems
19 upgraded the operating system used by
20 that machine to the Windows based
21 operating system?

22 A. Correct.

23 Q. Did it upgrade the machine
24 itself?

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1 Microsoft Office package performs?

2 A. Nothing other than
3 Microsoft.

4 Q. It was a Microsoft product?

5 A. Yes.

6 Q. In 2000, did LA Weight Loss
7 have any machine-readable files that
8 would fit under Paragraphs 1 through 3 of
9 the EEOC's Notice of Deposition other
10 than the Zurich Payroll information?

11 A. No, they did not.

12 Q. At the end of 2000 you said
13 that ADP took over --

14 A. Correct.

15 Q. -- for Zurich Payroll?

16 A. At the beginning of 2001.

17 Q. Did LA Weight Loss maintain
18 possession of the Zurich Payroll machine
19 and software at that time?

20 A. Yes, they did.

21 Q. Did ADP provide its own
22 machine and software?

23 A. Yes, they did.

24 Q. On site at LA Weight Loss?

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1 A. Correct.

2 Q. Did ADP analyze the Zurich
3 Payroll system and its contents prior to
4 becoming LA Weight Loss' payroll
5 administrator?

6 A. I'm not sure what you mean
7 by analyze.

8 Q. The data that was housed in
9 the Zurich Payroll system, how was it
10 transferred to ADP?

11 A. The data, any active
12 employees would have been transferred
13 from the Zurich system over to the ADP
14 system.

15 Q. Did the Zurich Payroll
16 system contain any information about
17 non-active employees?

18 A. The Zurich system maintained
19 information about non-active employees
20 from 1999 until the end of 2000.

21 Q. Prior to 1999, all
22 non-active employees had been purged?

23 A. Correct.

24 Q. What does ADP do for LA

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1 A. That would have been the
2 payroll department, Christine Moffit.

3 Q. Do you know how EEO-1
4 reports are currently generated?

5 A. Through the ADP system.

6 Q. Do you know who generates
7 them?

8 A. It would be Christine Moffit
9 again.

10 Q. In early 2001 you said that
11 ADP became the payroll vendor for LA
12 Weight Loss?

13 A. Correct.

14 Q. And did you say that ADP
15 retrieved the information that it needed
16 to populate its database from the Zurich
17 Payroll machine and database --

18 A. Yes.

19 Q. -- itself?

20 A. What they did was they
21 created the files from the Zurich system
22 of the active employees and then imported
23 them into the ADP system.

24 Q. ADP did not import the

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1 inactive employees?

2 A. No, they did not. Those
3 were maintained through Zurich.

4 Q. Do you know whether Zurich
5 and ADP coordinated that effort?

6 A. No, I do not. My sense was
7 that from speaking to Chris Moffit that
8 that was generated by ADP. ADP
9 facilitated that conversion.

10 Q. Would ADP have needed
11 Zurich's cooperation to --

12 A. I don't believe so.

13 Q. So, is it fair to say that
14 if ADP was able to access the information
15 in the Zurich Payroll database without
16 the help of Zurich, someone else could do
17 that?

18 A. Yeah, through the report
19 screens here, as we mentioned, generate a
20 report, output it to a file and then
21 input it into another system.

22 Q. In 2001, apart from the ADP
23 payroll database, did LA Weight Loss have
24 any machine-readable files that would fit